

DISPUTING AND DISPUTE SETTLEMENT AMONG THE  
MINANGKABAU OF INDONESIA\*

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The Minangkabau form a distinct Indonesian ethnic group dispersed throughout the Indonesian archipelago and Malaysia. West Sumatra, or more precisely, the three inland districts of Tanah Datar, Agam, and Limo Pulueh Koto, is their traditional homeland. Outside West Sumatra, save in some parts of Malaysia and southwestern Atjeh, they are mostly an urban people, seldom occupying the lowest socio-economic strata, sometimes invading the nation's highest strata, but mostly--as traders, merchants, craftsmen, small industrialists, students, teachers, government servants, writers, politicians, and professionals such as doctors, lawyers, and professors--forming part of Indonesia's expanding urban middle class. In West Sumatra, the urban occupational range, though broad, is similar. Most of West Sumatra, however, like the rest of Indonesia, is rural. The province has a population of about two and one-half million of which some 85% to 90% live in villages. Village (Mkb., *nagari*; Ind., *kenagarian*) sizes range anywhere from 500 to 5,000 inhabitants with most villages probably in the 1,000 to 3,000 range; a large village is usually composed of a cluster of hamlets consolidated into one administrative unit.

The theme of village specialization and differentiation runs throughout the whole of Minangkabau culture and society. Villages or village clusters usually have distinct dialects. Ceremonial procedure and dress also differ from village to village; village endogamy, particularly for a first marriage, is common.

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A second basic structural principle which orders Minangkabau society, and the one for which the Minangkabau are best known, is matrilineal kinship. Each village is composed of a number of matrilineages, each with its own house cluster, of varying size and generational depth and having corporate land ownership rights. Land use rights are generally divided among the senior women of a lineage. Residence in rural West Sumatra is matrilineal, although in towns neolocality is also common; the women form the core of the household, while the men--mother's brothers, brothers, sons, and husbands--are only peripherally attached to the household and tend to come and go.

Minangkabau minor lineages (*djurai*) or lineages (*kaum*, *suku*) are often joined together into larger units called *suku* which have a headman or *panghulu* addressed as *datuek*, *Dt.* Not all titled kin functionaries, or *datuek*, are *panghulu* however; some are his assistants. *Suku* structure varies. In its simplest form, a *suku* is simply a matrilineage or genealogically related group of matrilineages (e.g., a major lineage). Frequently, however, newcomer (*urang datang*) lineages attach themselves to early settler (*urang asali*) lineages, usually to ones with the same generic *suku* name (such as *suku Koto*, *suku Pisang*) as themselves.

A newcomer lineage then comes under the leadership of the *panghulu* of an early settler lineage and is considered part of that *suku*; but members of the newcomer lineage cannot normally succeed to the *suku* title, i.e., cannot become *panghulu*. The "kinship" units of Minangkabau villages thus include stratified quasi-sibs whose component lineages are not genealogically related, as well as genealogical kin groups such as lineages and major lineages. The stratification of lineages within a quasi-sib can be minimal, with the lineage of later arrivals having lands of their own and, if their lineage becomes large and prominent, perhaps eventually being given the right to have their own hereditary title; conversely, stratification may be quite extreme, involving many traditional work obligations, distinct lower status, and marriage restrictions.

This traditional stratification is sometimes challenged, provoking disputes. Lineage segmentation is common and involves the division of land rights; this is another matter about which the Minangkabau may dispute. These are of course only two of many trouble topics about which the Minangkabau dispute, and disputing itself is only one form of enacting and resolving social and cultural conflict.

Conflict is a patterned expression of the inherent polarities and incongruities of a culture and is based on opposing interests which arise from the very structure of the society itself. It is an expression of functional and historical processes which may be cyclical or repetitive (e.g., Minangkabau lineages segmenting into new lineages, thus perpetuating the

lineage system), cumulative (e.g., the gradual shifting of Minangkabau male economic obligations from the natal family to the family of procreation during this century), or revolutionary (e.g., the 19th century destruction of the traditional Minangkabau state by Islamic revolutionaries). Because of the integral role of conflict in social and cultural dynamics, no society or culture can be properly understood unless its revolutions, court cases, street fights, and family quarrels, to mention a few familiar expressions of social conflict, are also explicable.

As I see it, conflict is a social activity which should be regarded with considerable ambivalence--theoretically as well as by the people involved. The more usual way of making this point would be to say that there is some question as to whether conflict is dysfunctional or eufunctional, that is, whether it is good or bad for the society concerned. There can be little social or cultural change without at least minimal conflict. Therefore if we are to assume, as I would, that it is desirable for societies to adapt continuously, that is to change in response to the ecological-economic situations and international social and political contexts in which they find themselves, it must be assumed that some conflict will be necessary. Yet conflict is seldom pleasant even at low intensities, as in teasing and response, or competition, and often results in extreme emotional and physical pain. Thus conflict poses a problem for every society; it must be presumed necessary to the society's continued existence and prosperity; yet it is often disruptive, painful and ineffective. The real question for the people of a society--for their life or death, whether they will spend the years of their lives in peace or war, and with regard to the relative degree of human pain--is how ingenious they can be in devising workable compromises for dealing with conflict *while* they are changing, for finding ways to keep conflict at an acceptable level, whatever that might be, or simply for devising modes of enacting conflict which maintain or enhance the society's potential for change but place some bounds on the inherent destructiveness of conflict.

Social order is created and, unless it is maintained with extreme force (and perhaps even then), it is a negotiated order--one that may be relatively persistent but which is always ultimately fragile. The negotiation of this order occurs not once but continuously in two major arenas of social conflict: disputing and politics. I shall not discuss politics here but it should be noted that the two spheres may overlap.

This paper addresses itself to the examination of one way --by disputing--the Minangkabau deal with social and cultural conflict; it also deals with the related questions of what are the issues about which the Minangkabau dispute and what people in what specified social relationships dispute about which issues.

Minangkabau disputes are made up of chains of interlocking social events. The disputants themselves may be the main actors

in some of these social events; some are enacted between one party to a dispute, or his or her emissary, and someone in a power position who has been approached for special help; other events are relatively public affairs--community hearings, court sessions--in which both disputants and remedy agents, whether kinship functionaries, government administrators, or court officials, have their roles to play.

The variety of potential remedy agents and settlement establishments, along with a political situation in which power is widely dispersed, provides a context in which disputants may engage in considerable maneuvering and ally-seeking as part of their dispute strategies. Law, religious and customary principles, and new values are not simply guidelines for dispute settlement, but become, often in the context of protracted discussion and deliberation, the currency of symbolic barter. Disputing and settlement activities have a quality reminiscent of both Minangkabau bargaining and formal and informal kin and community decision-making procedures: disputing shares features with the market and with politics. It is in such a context that the Minangkabau use of their plural legal principles deriving from *hukum adat* or customary law, Islamic law, and national law, itself mostly derived from Dutch colonial law, is to be understood.

The multiplicity of roles, establishments, and rules involved in disputing and adjudication in Minangkabau society is both manipulated by and victimizes the disputants. Disputing is often time-consuming, complex, inconclusive, and costly. Minangkabau disputes do not, however, normally polarize a community into clearly delineated social or ideological factions. Indeed, Minangkabau disputing appears to function to maintain the social fabric rather than to rip it asunder. It is one of the social activities in which the cross-cutting social ties so characteristic of Minangkabau society are continuously formed and brought into play. Disputing is a socially regulated manner in which individuals can push or defend their interests and disagree over major and minor issues.

Disputes may last for years, sometimes for generations. Many of the lengthier disputes remain unsettled despite several attempts at settlement outside of court, and then move through the court system--sometimes from Islamic court to secular court or courts, more often from district court through high court to supreme court.

#### Disputes Outside the Court<sup>1</sup>

Most disputes in Minangkabau, as in many societies, our own included, are settled out of court by the parties involved or

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1. Disputes outside the courts are carried on in the regional language, Minangkabau. Settlements are often unwritten; if

with the informal assistance of a mediator who, in Minangkabau, is usually a friend, kinsman, or village leader; or they may be settled by a number of non-court types of hearings, such as those held in *surau* (Islamic prayerhouses), village schoolhouses, on mosque verandas, in disputed fields, and in village coffee-shops. Such hearings are attended by an ad hoc gathering of interested village or hamlet leaders who function rather like a combined judge, jury, and advisory board. Similar, but more formal, hearings are also held before kin functionaries. Hearings may also be held by a subdistrict officer (normally in his office) who acts as a mediator or as an unofficial judge according to a precedent set during the Dutch colonial period.

A coffeeshop hearing which followed an argument and fight provides an example of a spontaneous semi-formal community hearing.

#### Example One

[The interviewee was a male of about 40 and the *wali djorong*, village sector headman, of the community in which the dispute occurred; he acted as one of the remedy agents.]<sup>2</sup>

"The dispute was a fight which began with an argument which started with a misunderstanding. It occurred between A (who is about 54 years old) and Dt.B (who is about 40 years old)." [Interviewee]

"When did it happen?" [Interviewer]

"About three months ago. This is what happened: A and Dt.B were drinking coffee together in the coffee-

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written, Indonesian is usually used. Case records for the Islamic courts and district courts in West Sumatra are written in Indonesian or with Indonesianized spellings. Direct quotes of testimony given in Minangkabau are often written in Minangkabau, but paraphrases of testimony tend to be written in Indonesian. In this article I have used Minangkabau terms in my discussion of disputes outside the courts, but have followed the Indonesian and/or Indonesianized usage found in judicial opinions and decisions for court cases. Names of the law conferences are reproduced as they occur in documents pertaining to the conferences, that is, in Indonesianized Minangkabau and Indonesian.

2. Interviews were carried out in Minangkabau and/or Indonesian and have been translated freely. Whenever special liberties have been taken in the translation, or when technical terms are used, the original is given in brackets.

shop around noon after returning from working in each of their dry fields [*ladang*]. . . . They were talking about ordinary things. The conversation drifted to the topic of irrigation water. A said, not to anyone in particular:

A: 'At this time, when the days are so hot and water is so scarce it would be better if we could exchange the sawah that's at the end of the irrigation ditch for one that's at the head of the irrigation ditch [*banda*].'

"Without checking into what was intended by A, Dt.B assumed that his words were with an intention that wasn't any good, and he said:

Dt.B: 'You can't talk about exchanging it now. If you want to get the upper sawah you can add more money.' [This can also be translated: 'If you want to get the upper sawah, why don't you get rich?']

A: 'What did you say, 'add more money'? If I had more money [or, if I were rich], why should I have taken the lower sawah? The hell if I will!'

Dt.B [in an angry tone]: 'Now what do you want?'

A [in a cynical tone of voice]: 'If you ask what I want, I already told you.'

Dt.B: 'Speak clearly now, so that the problem can be settled.'

A: 'Our problem is already settled. What else do you want?'

Dt.B: 'Oh, you old hypocrite [The expression used, *indak bakulintjikan*, has a sexual meaning and is insulting if applied to an adult]. You better watch out or I'll [*den*, impolite form for "I"] beat you up.'

A: 'Now wait a minute, you talking about fighting? Everyone knows how to hit someone.'

"At that moment Dt.B's emotions couldn't be controlled any longer. He stood right up and struck out at A. To prevent damage to the coffeeshop (broken plates, for example), A ran outside, saying:

A: 'If this is what you [*ang*, a disrespectful form of address] want, come outside; this is the better place, not in there where there's no room.'

"Dt.B ran outside after A. But the people in the coffeeshop wouldn't let them fight, they separated them--so that there was no chance for them to fight or even to get close to each other."

"Were you [interviewee, the wali djonong] there when it happened?"

"No. I was in the sawah then, piling up earth around young potato plants. I got word [of the quarrel] from . . . , the owner of the coffeeshop, and also from . . . , the village security chief [Ind., *ketua keamanan nagari*]."

"Had there ever been any previous quarrel or dispute between A and Dt.B?"

"No. In fact up till then they had a helpful relationship with each other."

"What was behind the fight?"

"Probably it was like this: Dt.B pawned a plot of sawah to A, that is, the sawah which is presently being worked by A. That sawah is in fact at the end of the banda. So when A said, 'If it were possible to change it would be better to change with one that's at the head of the banda', Dt.B was offended [Mkg., *maraso hati*, or Ind., *tersinggung perasaan*], because he had pawned him the sawah at the end of the banda."

"How could a fight occur over such a little thing?"

"Let me continue with the story. That A, if he says anything, whether in the coffeeshop or anywhere else, sometimes he acts like he's insulting or teasing [*tjemeeh*]. And on the other hand, Dt.B is a person who frequently gets angry without any reason [*urang nan parabol*]; if we discuss or converse with him it is as if we were just his employees or dependents [*anak samang*]. So the basis of that fight was a misunderstanding between a person who seems to be an insulter or teaser and a person who gets angry without any reason."

"How was the dispute settled?"

"After people separated them, A returned home for the *luhue* prayers [afternoon prayers, from about noon to 3:00 p.m.; often written as *zuhur* or *dzuhur*], and to take home his hoe. Dt.B returned to the coffeeshop and sat musing [in a depressed manner]. The other people in the coffeeshop just let him be. While all

that had been going on, someone came to the sawah to get me and I came in from the fields right away and went directly to the coffeeshop. I found that a lot of people were already waiting and I received a report from the village security chief and the village sector security chief, and additional information from . . . [the coffeeshop owner] and others. And I saw Dt.B sitting musing pensively in the corner of the coffee-shop. After I received the complete report I sent a child to get A. When he came he didn't directly meet me as the village sector headman. First of all he entered the shop and bought an ounce of white sugar and returned home with it. Then he came back and bought a half coconut and returned home again. Then he came to buy bananas. When he was about to buy bananas, I greeted him:

Interviewee: 'Tuan [Mkb. (in region of dispute), older brother, here used as a classificatory term], sit down there a moment, there's something I want to talk with you about.'

"Then he sat down at the end of a bench. Other people sat down on the benches, stood in the kitchen, sat with crossed legs near me on the raised platform used to play dominos, or sat near Dt.B on another low platform, and there were also those who stood outside near the highway."

"Why didn't A meet with you right away?"

"Probably because he was ashamed because . . . he is my *ipa kontan* [real sibling's spouse, so here, SiHsb]. So he came to the coffeeshop pretending to buy this and that, pretending nothing had happened."

"What were the settlement procedures?"

"As soon as A sat down at the end of the bench, . . . [the village security chief] sat down near . . . [the village sector security chief] and the hearing began."

"Just a minute. There's something important I want to ask you. Why was the hearing held in the coffeeshop? Wasn't there any place more appropriate [*patuik*] than that?"

"There are appropriate places--such as the village sector *surau* [prayerhouse, Quran reading school] or the office of the village sector headman. But a coffee-shop is also all right. It doesn't violate *adat dan istiadat* [tradition and custom] and isn't in opposition with what's reasonable and proper. It is in line with



the Minangkabau proverb, 'Where the dog barks, there the iguana dives', which means, 'Wherever a dispute occurs, there we settle it.'

"Who opened the hearing?"

"The one who spoke first was . . . [the village sector security chief]. He spoke to me as the village sector headman.

Village Sector Security Chief [using a traditional title to address the village sector headman]: 'Sir, luck is as the whole day, bad luck is as but the wink of an eye. Yes, it is bad luck that we have gotten, a dispute has occurred in our village sector. So what should be done now? It's best we untangle what is tangled. Let us clear up what is muddy.'

Village Sector Headman [interviewee]: 'So who had been disputing [or arguing, *basalisieh*]?'

Village Sector Security Chief: '[The dispute is] between Dt.B, our *anak kamanakan* [kinsman], and A, our *urang sumando* [inmarried male].'

Village Sector Headman: 'What is the problem that has led to this dispute?'

"The village sector security chief told what had led up to this fight, as has already been explained. Next I again addressed . . . , the village sector security chief:

Village Sector Headman: 'Sir, now this is what is good and right: if what is tangled is to be untangled, [if] what is muddy is to be cleared up, this cannot be accomplished by just us two. As the proverb of old states, if the tangle is at the tip of the rope, look for the beginning of the rope; if the water at the mouth of the river is muddy, we must come back to its source. So now let us return again to the disputants, if those people want us to settle it, if they want us to solve it. So then let us look for a way that is good, a path that is right. [*Kito tjari malah tjaro nan rantjak djalan nan elok.*]'

"Next, the village sector security chief spoke to the village security chief, as his superior. The village security chief said that he was in agreement with the opinion expressed by the village sector headman [interviewee]. After that the village sector security chief directed his words to the two people who were disputing:

Village Sector Security Chief: 'Dt.B, now the words return to datuek. If what is tangled is to be untangled, if what is muddy is to be cleared up, we ask for your opinion: are you willing to allow us to settle it [lit., are you willing to agree with that way of settlement, *laikoh datuek namueh sapakaik djo djalan panjalasaan tu*]?'

Dt.B: 'If those are your words, a handful I accept as a mountain, a drop I take as the sea; it is true the tangled should be untangled. A while ago I was rash [*tadorong*, a word which may be used to refer to a horse running so fast it stops too late], now you want to rein [me] in and I thank you.'

Village Sector Security Chief: 'A, now the words come to you. The whisper is already audible, the calling has already been heard; yes, this is about untangling the tangled, about clearing up what's muddy. So if A [i.e., you] is in agreement with us here, [the problem of] A being crossed [i.e., involved in a dispute], we will straighten; [you] quarrel, we make peace.'

A: 'One path, one destination, one word, one meaning between us, me and you. Yes, that is truly what I wish.'

Village Sector Headman [to Dt.B and A]: 'If datuek [B] and A are agreed about this settlement I ask, from here onward, that the dispute which has occurred will not lead to resentment and vengeance, will not become a thorn in the flesh.'

A and Dt.B [almost at the same time]: 'From now on there won't be any resentment between the two of us, we are going to finish this dispute here.'

Village Security Chief [to the people attending the hearing]: 'Now it is already clear to us, as clear as the moon, as bright as the day: Dt.B and A are willing for a settlement. But ideally, as the proverb says, "[To know that] the cotton [is] white, look at the thread, [to know that] the heart [is] white, [observe] the behavior." The sign that both of these people have already made peace, so that it will be completely clear to us [is that] "the stake [placed in the ground to which a carabao or other animal is tethered] may be pulled at, the [fruit with a stem, or goods with a handle] may be carried [by its stem or handle]." So both of them should shake hands. So what do we think about that?'

Those present, together: 'Yes, that's it.'

"Because each of them was ashamed to be the first one to put out his hand, the village sector security chief said:

Village Sector Security Chief: 'Now then, let's follow what the elders say, "The old are tolerant [flexible, wise, thoughtful, reasonable, patient], the young do what they desire [are impatient, intolerant, spontaneous]."'

"With that [because of that hint], A [who was older] stood up and headed towards Dt.B [who also stood, embarrassed, because A had already put out his hand], and the two of them shook hands and said:

Dt.B: 'Forgive me, I was rash; from now on let's forget all about our disagreement.'

A: 'The same with me, Dt., a little while ago I really lost my temper. Let's make peace; from now on, let's now let our quarrel lead to future resentment. We will have one direction, one irrigation ditch, one surau, one coffeeshop, one nagari.'

Dt.B: 'We will guard that together.'

"Seeing that, everyone present smiled with satisfaction and I [the village sector headman] closed the hearing by thanking both of the disputants for being willing to make peace, thanking the village sector security chief and the village security chief, who had executed their duties properly, and the many people present who had helped to settle that dispute. They then adjourned and went back to their own affairs."

"Was the presence of . . . , the village security chief, really needed for this settlement?"

"No. He just happened to be in the shop at the beginning of the dispute. Without him, the village sector security chief and the village sector headman could have settled it. But since he was there anyway, the representation of the village [*nagari*] involved in the settlement was more complete."

"Was this matter reported to the village headman?"

"Only in the sense of letting him know about it, because the settlement could be made at the village sector level. But, if it hadn't been settled [there], then it would have been reported fully to the village headman."

"Is every dispute that occurs settled at the village sector level first?"

"That depends on the relevant hierarchy [*badjandjang naik batanggo turun*, lit., using stairs to go up, using a ladder to go down]. If the dispute can be settled by a lineage headman [*panghulu*] or lineage male [*mamak rumah*] or an unmarried male [*urang sumando*] among them, that's not against adat."

The underlying issue in this dispute is the serious and recurrent problem of obtaining enough water for a good rice crop. The issue was never resolved; indeed, a practical solution was unlikely as it depended upon improved irrigation facilities, a matter probably not within the control of the disputants. The total concern of the remedy agents was the restoration of social harmony. In this important respect the attitudes of remedy agents and observers alike approaches the Minangkabau ideal.

The remedy agents make skillful and flexible use of the available cultural routines. In this instance the style of interaction is that of the *pasambahan*, i.e., of ritual speech, a form of mutual consultation commonly used in ceremonies and, traditionally, in the deliberations of kinship functionaries in community meetings in the *Balai Adat* (Adat Meeting Hall). Ritual speech is distinguished from everyday usage by its flowery expressions, profuse use of proverbs, and measured rhythmic presentation. It is poetic and formal. It is not the speech of passion, but of inner control and outer harmony. Although symbolically the speech of adat meetings and ceremonies, it is here used by government officials to settle a dispute in a coffeeshop. Sometimes *pasambahan*-like speech may be used in even less formal settings to calm down disputants. The *pasambahan* style is by no means always used in dispute settlements and it is interesting to speculate as to why it was used here. The two most important factors seem to be that (1) the settlement was in the form of a public hearing, which in itself was occasioned by the fact that the quarrel and fight occurred in a public place, and that (2) the major remedy agents--the village sector headman and the village sector security chief--related to the disputants by kinship bonds as well as in their governmental roles.

The cultural principles used as "guidelines for dispute settlement" here are the proverbs of old. Many such traditional proverbs and sayings deal with substantive issues, such as the property relations between a man and his wife or the responsibilities of a man to his children and his sisters' children. It is these latter sayings, i.e., those dealing with property relationships, which have become the core of the *hukum adat*, customary law, utilized in the district and higher courts for civil cases.

Although disputants and remedy agents utilize concepts, principles and rules to some extent in all disputes, the extent

to which this is elaborated and rationalized--that is, the extent to which legalistic thinking is employed in disputing and settling disputes--varies considerably in disputes outside the courts among the Minangkabau. Furthermore, the multiplicity of roles and institutions that may become involved in dispute settlement, plus a political situation in which power is not focused but instead is widely dispersed, provides a social setting that encourages disputants to seek out allies and engage in behind the scenes maneuvering.

As an example of a dispute in which formal legal thinking was not elaborated, although the contrasting value positions underlying the dispute were quite clearly articulated, and in which a relatively high degree of ally-seeking and extra-legal power maneuvering was exhibited, I will describe a dispute which occurred in a relatively remote Minangkabau village in 1965.

#### Example Two

A 13-year-old girl's parents and her matrilineal kin planned to marry her to a middle-aged man, a common practice throughout Minangkabau until recent years and one still supported in this village by tradition-oriented lineage headmen and other kin group elders who disapprove of girls remaining unmarried once they are physically mature. The principal of the village school objected vigorously to the planned marriage on the grounds that it would interfere with her education; he then sought the support of the village (and later the sub-district) Islamic clerks, whose function it is to issue marriage papers. They supported his position. (This is not surprising since Islamic leaders in Minangkabau have been among the main proponents of modern education since the early years of this century.) The principal also sought out the village headman who, however, was sympathetic towards the girl's parents and her kin group elders, since he had married a young girl himself. Next, the principal sought out the sub-district officer, who firmly supported the position of the school principal and the Islamic functionaries. The family, however, bypassed what by this time looked like an effective roadblock to the marriage by appealing personally to the head of the District Office of Religious Affairs. And, to make their appeal more effective, they took with them a relative who was a member of the armed forces--a practice the Minangkabau refer to as *mangapik kapalo harimau* (carrying a tiger's head). The head of the District Office of Religious Affairs decided to instruct the sub-district and village Islamic clerks to allow the marriage on the grounds that "not to allow it was too risky, since the girl and her husband-to-be

had already had far too much contact for unmarried people of the opposite sex, and who could tell what might occur under such conditions."

The informant (the sub-district officer) was extremely upset over the conclusion of the matter and said: "With this decision probably the road has been opened for other young girls to marry; this could result in the school being closed and education making no progress." His concern for the precedent set by this decision was such that he felt that an adult education pilot project should be set up immediately in that village and that the government should make regulations ensuring that no one be allowed to become a lineage headman unless he had at least completed junior high school.

This dispute occurred within an ethnic group many of whose members are deeply committed to education for both men and women as a means to modernization, but for whom education past the sixth grade was virtually unavailable for anyone except the children of a very few Dutch-favored elite prior to 1947.<sup>3</sup> It may be that the convinced provincial modernizers who played such a central role in this dispute--the village school principal, the village and sub-district Islamic clerks, and the sub-district officer--have a point; rapid modernization may be more likely if the future socializers of the next generation, the women, gain new attitudes and new skills as rapidly as the men. And this, I think, is what the principal and his allies felt to be at stake in the dispute just discussed.

This dispute is one in which the issue, rather than political or economic interests, appears to be of major concern. Yet the means utilized for the ultimate resolution of the dispute were predominantly political rather than legal. Thus, a conflict over ideas, in this case values concerning sex and education, does not necessarily imply that sort of rationalization of conflict which we term legal thinking.<sup>4</sup>

Note that although the above dispute did not involve much *legal* thinking, there was considerable concern expressed by both

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3. The first post-high-school educational institution (an academy which later became a college) in one highland town of about 60,000 was started in 1954; by spring 1968 there were six institutions of higher learning in that town, with a total student body of 800, over 300 of whom were girls--mostly unmarried, but a few students were young wives and mothers who had married after completing high school.

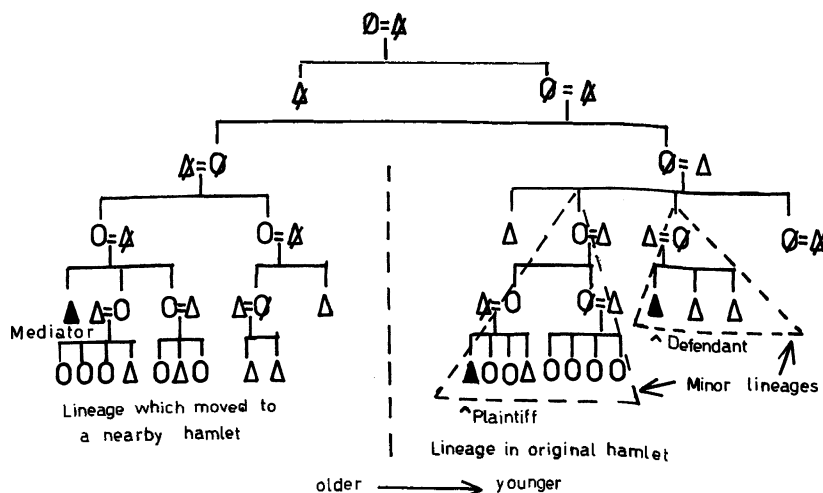
4. For a discussion of legal thinking, see: Edward Levi, An Introduction to Legal Reasoning (Chicago: University of Chicago Press, 1961).

the principal and the sub-district officer over the precedent set by the decision. Their fears may have been exaggerated, but informal lines of communication concerning the settlement of disputes do exist; out-of-court disputes and settlements are discussed rather widely among the Minangkabau, facilitating the spread of new ideas for the settlement of disputes. This informal pragmatic folk system of precedent appears to operate in a realm that we might call "ideas for conflict situations"--a cultural realm somewhere between custom and law, partaking of each and having a great deal to do with how both law and custom change.

The example below, in contrast to the one just described, is representative of those Minangkabau disputes settled outside the courts in which legal ideas are elaborated. In this third dispute, repeated discussion was the major technique leading to settlement and the complex maneuvering and ally-seeking of the previous dispute are not in evidence. The mediator was from a *balahan* lineage (segment of the same major lineage) which had moved to a neighboring hamlet. Sometimes the disputants walked the 2½ kilometers to the mediator's hamlet, sometimes the mediator came to them. For these latter visits, the disputants felt it was incumbent upon them to prepare a meal for the mediator "as is usual when a *mamak* (senior lineage male, classificatory mother's brother) comes to visit." These visits were not formal hearings; however, the mediator sought out both information and suggestions from the primary disputants and other concerned lineage members. The final settlement was symbolized by a simple ceremonial whose main feature was a communal meal (*mandoa*, called *selamatan* in Java). Major features of the dispute are summarized below.

### Example Three

Genealogy of Disputants and Mediator:



The defendant is the oldest male member of a minor lineage which is dying out because there are no female descendants. He is also the oldest male member of the matrilineage and as such is the *mamak kapalo warih*, that is, the guardian of lineage property, a role whose main function is to represent the lineage in civil court cases. He has redeemed a plot of lineage land with his own money and wants to build a house for his [wife and]<sup>5</sup> children on the land he redeemed.

The plaintiff is the oldest male and the major spokesman for his minor lineage, a minor lineage which has many female descendants. He objected to the defendant building a house for his [wife and] children on lineage land.

The mediator is the oldest male member (and *mamak kapalo warih*) of his lineage which is a segment of the same dispersed major lineage as the plaintiff and defendant. He was called in by the plaintiff because (a) the sib headman, who was contacted by the plaintiff, refused to consider the dispute and told them to try to settle it among themselves first; and (b) there is no living lineage or major lineage headman.

The defendant stated that he redeemed the land, which had been pawned long ago. He claimed he had never been given a chance to farm any of the lineage *sawah* (wet rice land) or *ladang* (dry land), although other members of the matrilineage rotated the use of the land among themselves. Moreover, he said, some of the other lineage members had used lineage land to build houses but he--a child of a different mother--had never used any of the land. He thinks that all the lineage land should be divided between the two minor lineages and is supported in this by the other members of his minor lineage [i.e., his younger brothers].

The plaintiff admitted that the defendant redeemed the disputed house site but claimed that it only means that the lineage is in debt to the defendant for the redemption price and does *not* mean that the land has become the defendant's personal property (*milik pribadi*). He stated that it is customary in Minangkabau for the *women* to farm lineage property while the men's role is simply to help them and to taste of the benefits. Thus it is appropriate and fair that the

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5. When a man speaks of building a house it is in terms of building it for his children or for his *kamanakan* (sisters' children); he does not speak in terms of building a house for himself or his wife.



women of the lineage should build houses on lineage land but it is incredible that a house for *anak pisang* (children of a male lineage member) should be built on lineage property except with the expressed permission of lineage members. He stated that both according to the advice of the older generation and according to *hukum adat* or customary law, *harato pusako* (literally, ancestral property, translated above as lineage property) may not be divided in such a way as to become individual property: *harato pusako* must always be communally owned by a matrilineal kin group.

The informant recounted the settlement as follows. "All lineage members must contribute to repaying the defendant for redeeming a portion of lineage property. The defendant may build a house on lineage land, but he only has use rights [*hak pakai*] over the land, thus his children are like guests on the land of their *bako* [father's matrilineage]; and when the defendant's minor lineage dies out [*punah*], the land returns fully to the whole lineage. Lineage property need not be divided, rather, an effort should be made to see that it is *not* divided and that use rights are rotated justly. And if a lineage member (who is a woman) wishes to build a house on lineage land it must be with the permission of all. [By specifying female lineage members the informant implies that only the women of the lineage may build houses on lineage land.] Since, at the beginning of this dispute, fighting almost occurred, the disputants must forgive each other, and return to a normal peaceful relationship."

This decision was written on government stamped paper, signed by both parties, by lineage elders, by the mediator, and by the sib headman.

Concerning this dispute, it is clear that the disputants and mediator (and the mediator's next-door neighbor and close advisor, a subdistrict officer), despite the absence of courts, lawyers, judges, or formal hearings, are here engaged in legal thinking. It is also evident that each disputant bases his argument on a rather different conception of what is right and proper. The plaintiff appeals to the traditions of the elders and to customary law (that rationalization of *adat*, i.e., custom or tradition, legitimized by the Dutch colonial regime and still used for many civil cases by Indonesian courts). He chooses to stress the indivisible corporate nature of lineage property and Minangkabau patterns of sex role differentiation.

The defendant appeals to those aspects of that same *adat* which support his argument but which potentially conflict with the legal rules selected by the plaintiff, and he also utilizes what appear to be emergent principles, principles not yet fully

accepted among the Minangkabau but which could conceivably come to be accepted in the future. His case is based upon his rights as a redeemer of lineage property and as a representative of a minor lineage which had not been given an opportunity to use lineage property; both, on the surface, are ordinary and legitimate claims. But by use of these principles he argues for rights not commonly accorded Minangkabau men--the right to build a house on matrilineal kin group property and, as a representative of a kin group segment which is dying out for want of female descendants, to inherit a portion of ancestral property. In the use to which he puts traditional ideas--in his attempted reinterpretation and extension of common legal concepts--the defendant is innovative. It is by just such attempts, in court and out, that legal ideas develop and change. As Edward Levi has said with regard to American legal briefs basing their arguments on legal interpretations not yet generally accepted, "The ideas have their day in court, and they will have their day again."<sup>6</sup>

The dispute settlement itself is a fascinating model of change and not change, of structural adjustment and of cultural conservatism: the matrilineage maintains its legal *ownership* of the house site; but the defendant not only maintains *possession* of the property but is allowed to build a house for his [wife and] children on it. In theory the other lineage members must repay the defendant for redeeming the house site; in practice, this repayment will probably be postponed for a generation or more until actual repossession is attempted. Then, most likely, a new problem will arise concerning the ownership and value of the house itself.

With regard to the farm land (sawah and ladang), the matrilineage maintained both ownership and control, and took a stand against division of the property. A stipulation that use rights be rotated "justly" is included in the settlement. This leaves open the possibility of circumstances arising in which it might seem just to allow male lineage members to farm lineage land. It is only a possibility, not a guarantee; but the fact that the Minangkabau conception of fairness with regard to lineage property (i.e., that it is the women and children who should be protected and cared for, hence it is they who should farm lineage land and live in lineage houses while men are deemed able to take care of themselves by seeking economic opportunities outside the village) has been questioned is important in itself.

The second example illustrated how differential valuations of principles co-existing in Minangkabau culture--education and early marriage for women--may provide the focal point for a dispute. It is worth noting that learning is an ancient Minangkabau virtue; originally it pertained to traditional lore. Later the

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6. See: Levi, Introduction to Legal Reasoning, p. 5.

value was redirected and reinforced by traditional Islam, and still later given new forms, content, and further reinforcement by the modernist Islamic movement and by the example of Dutch colonial schools. The valuation of modern education, then, has traditional, Islamic, and western roots. The value opposition here is not, as might be supposed, simply a matter of "traditionalism" vs. "modernity" or of Minangkabau vs. western ideas. Rather, it is a matter of two potentially but not necessarily conflicting Minangkabau ideals coming into conflict as these ideals were translated into specific forms of action. The behavior of the disputants and their allies was related to the principles they most valued, but was not clearly determined by these principles. Other alternatives existed: The girl might have been asked which she preferred; the family might have used education as an excuse to postpone any consideration of marriage for some years; the principal might have suggested that the girl remain in school after marriage, or he might have decided it was not worthwhile to try to prevent this marriage but that it would be more useful to apply himself to a long-range goal of promoting women's education, perhaps working together with prominent village women as well as with Islamic teachers. This dispute is instructive, then, in that it both illustrates the indeterminacy of the relationship of ideas to action and also the co-existence of potentially conflicting ideas and values within a culture.

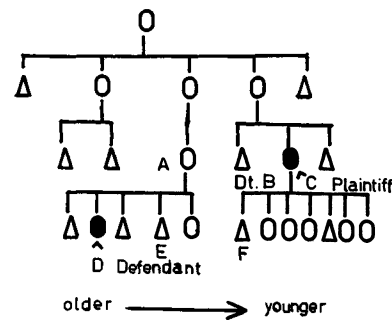
The third example illustrates the same points for a dispute which involves a greater degree of specifically legal thinking. We see how both defendant and plaintiff base their cases on legal ideas drawn from but one (e.g., adat) of the three major sources of Minangkabau legal ideas, yet attempt to use the ideas originating from this common legal tradition to justify quite different proposals for action.

Legal pluralism is a factor in disputes outside the courts. National statutory law and administrative practices--particularly as both affect land tenure--and Islam are of especial interest in this regard. The fourth example illustrates how official procedures concerning the registration of land transactions are utilized by a disputant to strengthen her case in opposition to the other disputant who utilizes an adat principle in defending her position.

#### Example Four

[At the time of the dispute the interviewee, a male, was about 27 years old, a high school graduate, and the town sector headman of a village of about 3,000 which was included for administrative purposes within the boundaries of a town but was located a few kilometers from the town proper. He acted as one remedy agent in the dispute recorded below.]

Genealogy of disputants:



"The plaintiff was C [a woman of about 55] and the defendant was D [a women of about 41]. . . . [C is the MoMoSiDa of D]. [Interviewee]

"What exactly was the situation with that land case? If you can, please make a picture of the land involved." [Interviewer]

"That land is ancestral land that they received from their *nenek* [here probably MoMo of C, i.e., MoMoMo of D, cf. genealogy; *nenek*, Ind., kin term for the second ascending generation and above]. That land was a house site that had been divided into two parts of equal size, like this sketch:

house	fishpond
land D <sub>1</sub>	land C <sub>1</sub>
(for D, received from her Mo A)	(for C)

"Let's call the land of C, land C<sub>1</sub>, and the land of D, land D<sub>1</sub>, to make things easier.

"On land D<sub>1</sub> D had built a house. But on land C<sub>1</sub> no house was built because C couldn't afford it. Land C<sub>1</sub> was made into a fishpond. About 1959 land C<sub>1</sub> was pawned by C to D because C needed money. The transaction document was made. Several months later F (the oldest child of C) joined the PRRI [*Pemerintah Revolusioner Republik Indonesia*, lit., the Revolutionary

Government of the Republic of Indonesia, that is, the rebel side during the Indonesian civil war, 1958-61] forces, and was going to leave home. He really needed money. So his mother came again to D to borrow some more money. D said that if she added more money that of course the fishpond couldn't be considered still pawned. Of course it really had to be sold. C agreed and said, 'If it has to be sold, let it be sold.' [Kok badjua bagai badjua malah.] Then D added more money and the pawn document was exchanged for a bill of sale. That document was signed by C and all her children, but not with their signatures, only with their thumbprints."

"When, and why, did a dispute arise?"

"The dispute arose in 1963 when D wanted to build a shop on that fishpond. C's side wouldn't allow it, because they said that the land was pawned and couldn't be used for a different purpose."

"Did they make a complaint to the town sector headman right away?"

"No, at that time they complained to their kin elders [ninieki mamak], that is to Dt.X, Dt.B and E [note that Dt.B is the brother of the plaintiff C and E the brother of the defendant D]. But Dt.X and Dt.B sided with C because 'Ancestral property can never be sold and if sold the sale is not valid, [if] pawned not permanently' [Harato pusako indak panah dapek didjua dan kalau didjua indak dimakan bali, digadai indak dimakan sandol]. At that time the bill of sale that D had was crossed out by both of the datuek, but it was still returned to D. D took the bill of sale to the Land Documents Functionary [Ind., Pedjabat Pembuat Akte Tanah, at the District Office of Agrarian Affairs] and they recorded the document. D of course wasn't happy with the decision of her ninieki mamak so then she took the problem to the man who was town sector headman before me. That previous town sector headman refused to consider the dispute and sent it back down again so that it could be settled by their ninieki mamak. Because of that D didn't build the shop. But the fishpond was still in her possession because C's side still acknowledged that the land with the fishpond had indeed been pawned to D."

"So when did this case come to your attention?"

"In 1966, I forget what month. D complained to me. She came and complained orally because she worked as a nursing assistant in the Mother Child Welfare Clinic

[e.g., as assistant to a certified midwife in a pre- and post-natal and infant clinic, Ind., *Balai Kesedjahatan Ibu dan Anak*] that was next door to my office. She said that previously she had had a dispute with C that had been brought to the former town sector headman, but it wasn't settled. She said, 'It's good to have an outsider govern our village' [*Rantjak urang lain nan mamarintah disiko*]. Her intention was to compliment me, since the previous town sector headman who hadn't been able to settle the dispute was a person from that village. I asked whether there were any documents or not and she said there was one. Then I told her to come back the next day with the document. In the meantime I also told C and her children to come to my office the next day.

"The next morning before she began work at the Mother Child Welfare Clinic, D came to meet me and gave me the bill of sale. Because I had already asked her about the problem the previous day, on the second day I had no further need of her. So she went on to work. A little later C and her children arrived. I think that they were all present at that time. Then I asked them about the problem.

"C, who was about 55 years old, said, 'It's true, that fishpond was only pawned. But apparently D feels that she is really somebody, so she just wants to play around with us. Why should we want to sell our ancestral property!'"

"Did they admit there was a document that they had signed?"

"I showed them that document, but they wouldn't admit it. 'Why should we want to put our thumbprints on that letter, we aren't illiterate,' said C's children. Then I asked them to put their thumbprints on some other paper. Then I said, 'Go home now and look for proof that that land was really pawned. For example, of course there is a duplicate of the pawn document or witnesses. Later I will compare the thumbprints.' Then they went home. About a week later they came back to say that they couldn't find any proof or witnesses that the land was pawned. Based on the fact that there was a bill of sale and C's side couldn't prove that the land was pawned and because the land had already been registered [Ind., *diaktekan*] by D, I decided that the sale was valid and that D could do what she wished with the land she had bought. [I told them that] if they didn't want to accept this decision they could make a complaint to the district court."

"What was their reaction to that decision? And also how about the niniek mamak who were on C's side?"

"There was no reaction and they didn't complain to the district court."

"In what section of the town sector do they live?"

"In . . . ."

"In the genealogy . . . there is no Dt.X. What is his relationship to C and D?"

"Dt.X is a panghulu of their suku but is not a member of the same lineage [*sakaum*] as C and D."

This example illustrates the differing points of view of two sorts of remedy agents--ninieks mamak [kin elders] and a young relatively well-educated government official. The former relied on the basic adat principle recounted in an adat saying that ancestral property cannot be sold. The latter relied on the existing documentary evidence that a sale had occurred and by comparing the thumbprints he attempted to guard against the possibility of forgery. He was confident in his decision because the bill of sale had been registered by the Land Documents Functionary. In this respect he followed a general urban tendency to place increasing confidence in documents and official records; further he was probably aware that documentary evidence and actual possession are two major factors considered by the district court.

The importance of differing points of view in influencing the stands taken by the remedy agents should not be overly stressed; personal relationships with the disputants may have also influenced their decisions. The town sector headman and D, whom he supported, were probably in daily contact since she worked in the clinic next door to his office. And Dt.B, who may have influenced Dt.X, was the brother of C. The other niniek mamak consulted, E the brother of D, did not support the decision of the two datuek.

The former town sector headman, in refusing to consider the dispute, supported the decision favoring C made by Dt.B and Dt.X. There is no data as to why the previous town sector headman supported Dt.B and Dt.X but we may assume that he, as a community member himself, would be more sensitive to the point of view of members of the community elite than would an outsider.

Another issue appears to be D's independent decision to use the land for commercial purposes, although on a very small scale. C never challenged D's right to the land until she decided to build a shop on it. In West Sumatra, the setting up of commercial enterprises is often hampered by the fact that decisions

regarding land use are seldom wholly individual matters and land is not easily bought and sold since would-be sellers, as individuals, rarely have full and unambiguous ownership rights. This is not entirely a disadvantage for it is also this latter fact that has prevented the alienation of Minangkabau land to other wealthier ethnic groups, a situation contrasting with that in much of Southeast Asia and one reason (their trading ethic being another) why the Minangkabau tend to be more prosperous than many Southeast Asian ethnic groups.

In the final example of disputes outside the courts to be presented here, Islam is used by the plaintiff in arguing his case. To illustrate the strategic possibilities this provides, as well as some of the ambiguities it engenders, I will quote part of a discussion occurring in a semi-formal family meeting held at the disputants' mothers' house.

#### Example Five

The dispute was between a man (plaintiff) and a woman (defendant) whose mothers were sisters. The woman not only controlled all the minor lineage rice land, but she had also borrowed a great deal of unhusked rice from neighbors in order to finance the frequent and costly entertaining of her PKI [*Partai Komunis Indonesia*, Indonesian Communist Party] husband's political guests. Her mother's sister's son, the plaintiff, complained that it was shameful for her to borrow so much rice since their minor lineage owned quite a lot of sawah, and that, in any case, she should only get half of the rice crop harvest and the other half should be set aside for use by the whole minor lineage. Significantly, the plaintiff timed his complaint to coincide with a period in which the defendant's husband's political faction had fallen from favor both nationally and locally, and at a time when he had just been removed from the headmanship of a neighboring village. The disputants' mothers' brother agreed with the plaintiff; he tried unsuccessfully to settle the dispute. The lineage headman was then consulted; he told them to ask the senior living female member of the minor lineage, the disputants' mothers' mother's sister, who had been living in Djakarta, to return to the village. Upon her return, she met with the lineage headman; shortly thereafter the meeting mentioned above was held. It was opened by the lineage headman who summarized the dispute. The following exchange (reported by the plaintiff; I paraphrase the Minangkabau) then occurred:

Sr. Woman: As far as I'm concerned the sawah shouldn't be divided, because if it is, it'll be my children and



grandchildren who stay in the village who lose out. For all that sawah it is I who have the right to decide, according to adat and to religion.

Plaintiff: If according to religion, you can't decide because there is a set way of calculating the portion for each heir.

Sr. Woman: Very well, but if that were to be all of you in the village would still get only a very small portion. Of course it would be divided in half first between me and your grandmother [contestants' mothers' mother]. Your grandmother's portion would then of course be divided among her three children. And of course your mother's brother would get the most because he's the oldest male child.

Plaintiff: All right, as long as it's clear what property belongs to each person; right now it's all a mess.

Sr. Woman: My grandchild, it's not yet appropriate that you should say that. It was my money that was mostly used to buy or redeem this sawah. You all only have a right to the sawah that was opened by hand [*ditaruko*]*--one field with a harvest of fifteen sacks of unhusked rice, and it would have to be divided three ways. I'll take my other sawah.*

The plaintiff had nothing more to say after that, and the old woman and the lineage headman went on talking things over; finally they agreed on a proposal:

Lin. Head: The results of our discussion which we suggest to the rest of you are as follows: Regardless of whoever farms the sawah, the harvest should always be divided in two--half to be stored in the granary for communal needs, and half for the person who does the farming. Since the only grandchildren [classificatory grandchildren of the senior woman] who are in the village are the contestants and their mothers' brother who is old and sick, it is the contestants who should control (with advice of their mothers' brother) the half of the harvest which is stored in the granary.

Defendant: What if there are problems that can't be handled here in the village, such as if [the plaintiff] still holds onto his opinion [i.e., his opinion expressed in this meeting, not his initial opinion]?

Lin. Head: [to the plaintiff] What do you think about that?

Plaintiff: I'll agree to this way of doing things. I objected previously because the rice was just used up without any plan at all.

The agreement was carried out; the next rice harvest was divided in half, with one half going to the defendant who farmed the land and the other half (with the agreement of the defendant and the contestants' mothers' brother) being used by the plaintiff to buy a cow. In the meantime, the minor lineage sent someone to the defendant's husband's village to invite him to return to his wife. (He had left her because he felt that the plaintiff blamed him for his wife's excessive borrowing of rice and her initial unwillingness to divide the rice harvest.)

The discussion quoted and the other events of this dispute are interesting in many ways--not the least of which are the pictures given of the respective roles of senior women and lineage headmen, of the diverse conceptions of Islam held by Minangkabau, of political factors in the timing of disputes, and of the sensitivity and insecurity of husbands in the face of pressure or disapproval from members of their wives' descent groups. For the purpose of the present discussion, however, I simply wish to point out that legal pluralism provides interesting opportunities for dispute strategy *and* that disputes provide a regulated testing ground for checking the resiliency of some principles while attempting to promote others. Here we see the plaintiff arguing for far more than he either wishes or expects, and in an opportunistic and apparently unplanned manner using Islam as one basis. He seems to assume that if he asks for more than he expects he has a better chance of getting what he really wants. This allows him, at the end, to graciously submit to a "compromise" suggestion offered by his superiors which is virtually identical with his original request.

In this respect, the above discussion rather resembles Minangkabau bargaining procedures. There is an art to both disputes and bargaining by which, when skillfully exercised, each party can test the limits of possible interest maximization and yet ultimately arrive at a solution which is not only a reasonable compromise, but which also is emotionally satisfying. Yet the parallels must not be pushed too far. In disputing, the emotions are frequently raw, the interest conflicts more severe. Disputes can easily move over into, and are often retrieved from, other forms of conflict--quarreling, fighting, even manslaughter or murder. The relative sedateness of verbal strategy does provide a social alternative for violence. But sometimes the line is not clearly drawn (e.g., the threats implicit in bringing along a member of the military in the second dispute above, and in the timing of the fourth dispute).

The five examples presented above indicate something of the range of dispute settlement styles found outside the courts.

The examples also illustrate a few of the trouble topics about which Minangkabau disputes revolve. Disputes settled outside the courts cover a wide range of Minangkabau-style human problems--far wider than those found in either civil or criminal cases from the district court or, especially, in Islamic court cases--including disputes between minor lineages over division of ancestral land (e.g., land owned by the matrilineage); disputes over succession to matrilineal kin group titles; disputes between the matrilineal kin of a party who has sold land and that seller or the buyer; disputes over the inheritance of property a deceased man controlled during his lifetime between his widow (or children) and his matrilineal kin group; marital disputes; disputes over social and sexual propriety; disputes resulting from the conflict of the 1960 Land Reform Act and Minangkabau custom; disputes over the flow of irrigated water so necessary to the growth of the staple crop, wet rice; disputes between villages over boundary territory or over the use of roads or streams passing through both villages, etc.

Diagram I summarizes a sample of 100 disputes collected in West Sumatra by myself and my assistants. Fifty-eight per cent of the disputes in the "outside the courts" sample were among kin: some 41% concerned members of matrilineal descent groups; 14% concerned kin linked by marriage (including husband-wife and father-child conflicts); and 3% involved both lineal and affinal kin. Although kin were involved in every major category (except nagari rights), only 6% disputed about any of the numerous trouble topics combined in the last two categories--miscellaneous (water rights, property damage, theft, fighting, transfer of a government house) and nagari rights (use of river or road passing through two communities, border territory between two communities, independence of hamlet)--as compared to 52% for disputes concerning rights to ancestral property (*harato pusako*), rights to property controlled by a deceased male during his lifetime whether it be earned property (*harato pantjarian*) or ancestral property, nuclear family property rights (in particular husband-wife joint property, *hak suarang* or *harato suarang*), choice of spouse, transactions, and improper behavior. The percentage of kin involved in this group of trouble topics as contrasted to the former is high, since all of the latter are topics in which kin have some degree of joint interest. And within this group of trouble topics in which kin have especial interest, disputes concerning division or allocation of use and/or ownership rights to corporeal ancestral property, disputes over whether property is ancestral property or earned property or husband-wife joint property, property division disputes within the nuclear family, and disputes concerning property transactions are far more numerous (33%) than disputes over titles, spouse selection and improper behavior (15%). Of all that kin have some sort of corporate rights over--corporeal property, incorporeal property (titles), marriage alliances, the behavior of kin group members--it is real property which they dispute about the most. Almost all of this real property is land--wet rice

Diagram I

## Disputes Outside the Courts: Issues and Dyads

Issues	Dyads	Minangkabau					Villagers vs. other	Non- Minang- kabau involved	Total
		Same lineage	Same suku	Marriage linked	Marriage linked & same lineage	Marriage linked & same suku	Other		
Ancestral Property Rights									
Land: division		11	1						12
tanah ulajat?			1					2	4
transactions		4	2						6
Other: title		2	4				1		7
Not Clear: land		2					2		4
Transactions: land			7				8	2	17
other							2	2	4
Partnership: other		1		1			1		3
Rights to Prop. Controlled by Dec. Male During His Lifetime: land				4					4
other				1					1
Nuclear Family Property Rights: land				2					2
Choice of Spouse		1			2				3
Behavior: sexual, ritual, marital roles, youth roles		2		3		1	2	2	10
Nagari Rights: land								3	3
other								3	3
Miscellaneous: land			2						2
other*			1	3			9	2	15
Totals		23	18	14	2	1	25	10	100

\* Includes unintended property damage, irrigation, fighting, suspected theft, transfer of government house, education vs. early marriage.

field (sawah), dry fields (*parak*, *ladang*), house sites, burial sites. The Minangkabau inhabit one of the more densely populated areas of Sumatra and land pressure is an important factor. Two features of Minangkabau culture also predispose them to land disputes: (1) the Minangkabau value the accumulation of material goods, including land, for its own sake; and (2) having ancestral land in a village is the one sure sign that a person or kin group is a "real member" (*urang asali*) of that village, an early settler or at least one who has come to belong to that place.

There are more disputes in the sample among close matrilineal kin (same lineage) than for any other kinship category, 23%; disputes among non-kin of the same community are about equally numerous, 25%; followed by more distant matrilineal kin (same *suku*), 18%. Two other relationship categories are fairly large: marriage linked kin (14%) and villagers *vs* outsiders or other villages (10%). Other relationship categories are residual --i.e., disputes involving non-Minangkabau and disputes involving both lineal and affinal kin. All the disputes involving non-Minangkabau occurred in towns, although the reverse is not true. The fact that there are far more disputes among lineal kin, particularly if distant lineal kin are included, than among marriage linked kin might be interpreted as indicating greater solidarity among marriage linked kin than among lineal kin. However, while such an interpretation is probably defensible in terms of nuclear family vis-a-vis lineage (I would be more cautious if comparing nuclear family and minor lineage), this is hardly the case with regard to other kin linked by marriage vis-a-vis lineage members. Rather, many common rights and obligations link lineal kin, providing them with many matters about which they may disagree. People linked by marriage (with the exception of the nuclear family) or through the nexus of relationships inherent in their residence in one community have fewer common rights and responsibilities and therefore dispute less.

Close matrilineal kin do most of their disputing about allocation and division of real ancestral property (15% as compared to a total of 23%) but distant matrilineal kin (same *suku*) mostly dispute over transactions and, to a lesser degree, over incorporeal property (titles) and real ancestral property (9%, 4%, and 2% respectively compared to a total of 18%). The high proportion of disputes about ancestral property among close lineal kin is a reflection of the fact that it is they who directly control such property, while the relatively high percentage of transaction disputes among distant matrilineal kin is due to the fact that ancestral property is often pawned and sometimes sold to distant lineal kin in preference to others.

The only trouble topic which occurs in most relationship categories is "behavior" or "impropriety." To some extent of course, all or most disputes concern behavior which others find objectionable. However, under the rubric "behavior" I have placed only those disputes in which the primary "object" of

contention is an individual's behavior. Ten per cent of the disputes fall into this category.

By far the majority of the disputes in this sample were between members of the same community (88%); most were among people who were not only members of the same community but also ethnically Minangkabau (82%). All of the thirteen disputes among townspeople were among people residing in the same town, although half of these disputes were between people of differing ethnic groups. (This high figure reflects the fact that I was in a somewhat privileged position with regard to information about some types of interethnic disputes.) Seventy-nine per cent of the disputes are among people I have classified as predominantly villagers; of these 70% were among members of the same village. Only 8% of the disputes were between villagers and city people.

#### Islamic Court Cases

Islamic court cases contrast with disputes settled outside the courts in that (1) procedure is inflexible and highly formalized, and (2) Islamic court hearings are primarily concerned with but two matters: granting petitions requesting marriage certification and trying divorce suits brought by wives.

Many people who have no record of their marriages (often because they were married before marriage papers were issued routinely) now find they need marriage papers to apply for retirement or widow's pensions. In 1964, 59%, and in 1966, 52%, of the cases in one Islamic court were petitions for marriage certification. Although the percentages are high, the number of people involved was not very great; only 67 people in 1964 and 68 people in 1966 received marriage papers. In 1964, 46 cases (41%) and in 1966, 61 cases (46% of the cases) heard in the Islamic court mentioned above were divorce cases. In 1966, about twice as many males (all of whom were civil servants, mostly between 50-70 years of age) as females (about two-thirds were self-employed, mostly as farmers plus a few involved in peddling or handicrafts the remainder being housewives, ages widely scattered) requested marriage certification. In the case of female petitioners, their husbands or deceased husbands had all been civil servants. About half of these petitioners were townspeople and nearly one-third were villagers; data was ambiguous for the remainder.

The plaintiffs in divorce cases were all women (save for three cases in which the position of the names was probably accidentally reversed in the records); almost all of them were under forty and the majority (about 80%) under thirty. About 85% of the plaintiffs were village women.

The sorts of people who use the Islamic court for marriage certification and divorce clearly differ: marriage certification

petitioners are mostly male urban civil servants over fifty; divorce case plaintiffs are women under forty, most of whom are villagers.

This Islamic court was in a town of some 60,000; the court served not only that town but the surrounding district, mostly rural, population about 315,000. For this area more than 1,000 divorces were registered by community Islamic clerks (*P3NTR*, *Pembantu Pegawai Pentjabat Nikah Thalak dan Rudjuk*, Assistant Records of Marriage, Divorce, and Remarriage) during 1964. Those divorces were formally ones in which the husband repudiated his wife; but the *P3NTRs* recorded that many of these divorces were because of the wives' wishes or by mutual consent. Since many Minangkabau men will give their wives divorces if they want them, the Islamic court is largely used by women whose husbands are not in West Sumatra, or, rarely, who refuse to grant them a divorce. Court divorces are time-consuming and costly affairs, and they are usually not sought unless a woman wishes to remarry.

The Islamic court, then, provides a forum for the grievances of wives and, in so doing, compensates for the Islamic provision that a man may divorce his wife by simply stating "I divorce you," but gives women no such privilege. In Indonesia, as in much of the Islamic world, latter-day Islamic legal thinkers have concluded that marriage is a contract involving the duty of a man to support his wife and otherwise to care for her, and that if he does not do so, the wife can sue for divorce. In a divorce case, the court ascertains under which of two legal principles (*ta'lik talak* and *pasach*, or *fasach*; both concern non-support and/or abandonment) the plaintiff wishes to claim the marriage is no longer binding. Hearings consist of the presentation of evidence showing that legal principle is indeed applicable in this case. If the evidence is inadequate the plaintiff is usually advised to present her case on the basis of the other legal principle; or the court attempts to ascertain whether the ceremony itself might have been improperly performed, which would provide grounds for annulment proceedings. Eventually she usually succeeds in obtaining a divorce or annulment.

Significantly, for matters about which Islamic legal principles might conflict with customary legal principles, such as property division after a divorce or the inheritance of a deceased man's property, would-be disputants are usually advised to settle their differences out of court or to take their case to the district court. If they do persist in bringing such matters before the Islamic court, and only very few do, the decisions reached by the Islamic court are not enforceable; should they not be honored by the contestants, the case must be retried by the district court before the decision can be

enforced. I have records<sup>7</sup> of but two cases which were heard in both types of courts.

#### Example Six

In early 1960, an inheritance case concerning commercial property which had been owned by the disputants' deceased father (the disputants had different mothers) was heard by the Islamic court in the West Sumatran town in which I collected court data. A cash settlement was agreed upon and the Islamic court made out a letter of agreement (Ind., *surat perdamaian*) which was then duly signed and witnessed. When, after almost two years, the plaintiff had not yet received the cash agreed upon, he filed a complaint for a civil suit with the state district court. The defendant did not appear at any of the scheduled court hearings, and the district court finally granted the plaintiff's request to enforce the earlier agreement, with the added stipulation that interest be paid.

Thus, the Islamic court settlement was used as a legal precedent in this case. Note, however, that the legal basis of this settlement was mutual agreement (Ind., *perdamaian*), and although the settlement occurred within the context of the Islamic court, it was not in itself a court decision (Ind., *keputusan*) based on Islamic law.

#### Example Seven

A second case heard by both the Islamic court (1961) and the district court (1962) contrasts with the former case--although it too concerned the inheritance of a deceased father's commercial property by children of different mothers--in that the legal basis for the decision was changed, and the plaintiffs, both women, were awarded a larger share of the inheritance by the district court than by the Islamic court. According to the Islamic court decision (*keputusan*), the two female plaintiffs were each awarded one-eleventh the property, while the four male defendants were to receive two-elevenths each and the female defendant one-eleventh. This decision was based on the Islamic principle that "sons should inherit twice as much as daughters." The defendants (who were in possession of the property, a store) did not, however, give the

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7. The Islamic Court records for these two cases were unavailable; the data presented are based on district court records.



plaintiffs the share awarded them by the Islamic court. The plaintiffs then brought the case to the district court. There the defendants claimed that the business had been given (*hibah*) to them by their father and that they therefore had sole right to it.

The district court judge found the gift illegal (*tidak sah menurut hukum*) for procedural reasons and also because "there are other heirs, namely the plaintiffs, who would suffer loss [if the gift were legal]." He further argued that the principle that the property should be divided between plaintiffs and defendants had been established by the defendants' failure to contest the Islamic court decision. However, the district court judge went on to argue that "In Minangkabau, family law is matrilineal. According to the matrilineal system, the plaintiffs have more right to the property than the defendants because the plaintiffs are women." [The Javanese judge's conception of matriliney may reflect a stereotype of the Minangkabau family system held by non-Minangkabau. The fact that it is not the usual interpretation of Minangkabau matriliney makes it no less important as a legal idea in the context of actual dispute settlement. We are reminded here of the senior woman's "misconceptions" concerning Islamic legal principles exemplified in the last out-of-court dispute discussed above (Example Five). The imprecision and ambiguity which tends to surround these concepts-in-use appears to be a significant feature of the West Sumatran use of legal ideas originating from plural legal traditions.]

After having presented two differing interpretations--the Islamic and the "matrilineal"--as to which contestants should receive the larger portion of the inheritance, the judge presents his legal opinion that each contestant has equal rights to the inheritance, and that it should be divided evenly among them without regard to whether they are male or female. Each contestant was therefore awarded a right to 1/7 of the value of the shop. In this case the judge's legal reasoning takes a dialectical form; it almost appears that the judge himself is taking pains to ensure that opposing legal principles each "have their day in court" and then has taken it to be his role to set out an appropriate legal compromise in the form of a decision based on a "new" legal principle.

These two cases are of especial importance because they both illustrate the structure of the relationship between Islamic court and district court and provide examples of ways the courts deal with the "conflict of laws" issue.

District Court: Criminal Cases

State district court cases are divided into criminal and civil cases. Criminal cases are tried according to a national criminal code which was carried over almost without change from the criminal law of the Dutch colonial period. Criminal law is used, first and foremost, by the police. In addition to the subdistrict officer and his office staff, each subdistrict has a police officer aided by a few policemen; the towns have larger police departments. The subdistrict police are the recipients of numerous complaints from villagers and from village headmen. Their ideas about criminal law, as well as their conception of their own role with relation to conflict, help them to decide which complaints should be fully investigated, written up and sent on to the district criminal intelligence division, which, in turn, sends the reports on to the district attorney's office.

The subdistrict police exercise wide discretionary powers. They realize that villagers feel that having to appear in court on a criminal charge is a serious blow to prestige and that it imposes an economic strain on the prisoner's family. Kin of prisoners bring special food to the prisoner every day and this means costly transportation, far higher expenses for food, and loss of farming time by the mothers and wives concerned. A subdistrict police chief often sees his role as that of one who should try to calm down and reconcile enemies or as one who should frighten those who misbehave by calling them in to the police post, perhaps keeping them there overnight, or threatening to send in a report on them. Villagers, in turn, know that some police are amenable to various forms of persuasion. Further, which laws are utilized depends largely on what sorts of complaints are brought to the police. For all these reasons, a large portion of the criminal code goes unused. Only those laws which are relevant to recurrent conflict situations are utilized; it is the laws concerning crimes against property (theft, fraud, dealing in stolen goods, property destruction) and concerning crimes of violence (especially assault and battery but also manslaughter and murder) that the Minangkabau find most relevant.

The existence of the police and of legal sanctions is important in that these add another dimension to the already exceedingly complex strategic possibilities open to people in conflict. These sanctions also place the police in a relatively powerful position vis-a-vis villagers, a position which they may use to gain supplemental income and/or to increase their authority (if not necessarily their skill) as mediators.

Once a case has reached court--many, perhaps most, do not--and after the charge and the recommended sentence has been made out by the district attorney, the criminal case is largely a matter of hearing testimony to re-examine the evidence, and of ultimately finding (in about 90% of criminal cases) the defendant guilty. The judge's sentence is usually lighter than that

requested by the district attorney and the sentence is frequently suspended for, as mentioned above, appearing in court has already been a heavy sanction.

Diagrams II, III and IV summarize a number of features--type of crime, ethnic group, sex, job and age of defendant--for the 1,890 criminal cases heard at a district court in 1963. Traffic violations account for most of the cases (1,679); misdemeanors exclusive of traffic violations (29), felonies (144) and economic crimes (38) account for the remainder. Most felonies are concerned with theft or fraud (107); the only other fairly common crimes are assault and battery (16 felonies, 13 misdemeanors), hoarding and overpricing goods (17 and 15 economic crimes, respectively), sexual crimes (6 felonies) and gambling (4 felonies, 5 misdemeanors). The majority of defendants for felonies and misdemeanors were Minangkabau males between the ages of 16 and 40. Defendants in economic crimes tended to be slightly older, most of them being between 20 and 50; there were also proportionately more non-Minangkabau but, again, almost all defendants were male. There is a high rate of conviction for both misdemeanors and felonies (91% for the latter).

Strictly speaking criminal cases are disputes between the state and the defendant. This legal format should not blind us to the fact that not only are many criminal cases the official sequel to conflict activities such as quarrelling or fighting but also that some criminal cases are but one stage or aspect of longer and more complicated disputes.

Many of the matters tried as crimes are not very different from disputes settled outside the courts, although they cover a narrower range, and some overlap civil court cases. For example, in a land dispute between two women of the same kin group, a woman was tried and convicted in a criminal case for property destruction because she dismantled part of a house the other woman was building; later she became the plaintiff in a civil case concerning the same land.

Now and then the police will report a crime and the district court will find the defendant guilty and sentence him, only to have the High Court point out that there is no law governing such a "crime." This happened in one case in which a man had intercourse with his wife's sister's daughter. The case was first heard before a kin group council, which decided there was nothing they could do since (although polygyny is permissible according to both Islam and adat) a man may not, according to adat, marry any of his wife's matrilineal relatives (unless she dies, and then such a marriage is favored). The girl's mother's brother insisted the village headman report the affair to the police and the defendant was convicted of adultery by the district court. Ever since the High Court overturned this decision there has been, from time to time, a call from some Minangkabau for more stringent national laws relating to sexual activities,

Diagram II

District Court: Criminal Cases, 1963  
Misdemeanors (*Pidana enteng*)

A. Types of Crimes

Violations ( <i>Pelanggaran</i> ):		
traffic violations		1679
Petty Crimes ( <i>Pidana tidak sumir</i> )		
assault and battery	13	
gambling in public place	5	
possessing/selling/giving forbidden medicine	5	
theft	2	
use of unstandardized scale	1	
building without permit	1	
production of methylated spirits without permit	1	
vagrancy	1	29
Total		1708

B. Ethnic and Sex Characteristics of Defendants

	Male	Female	Total
Minangkabau	1388	4	1392
Non-Minangkabau			
Batak	248	-	248
Chinese	118	-	118
Javanese	6	-	6
Other Malay/Riau	2	-	2
Total			1766**

C. Job and Age Breakdown

	11-15	16-20	20-30	30-40	40-50	50-60	60-70	?	Total
motor transport workers*	1	79	800	469	141	43	1	122	1656
horse/buffalo cart drivers	-	-	-	-	1	1	-	-	2
peddlers/small businessmen	6	11	6	14	3	1	1	1	42
laborers	7	6	5	1	-	-	-	-	19
farmers	1	4	3	-	3	-	-	-	11
students	5	2	-	-	-	-	-	1	8
civil servants	-	1	3	2	1	-	-	-	7
craftsmen	2	1	2	-	-	-	-	-	5
not stated & unemployed	3	3	5	3	-	-	-	2	16
Total	1	103	828	493	162	51	2	126	1766**

\* Including drivers (*supir*), trip supervisors (*kontroler*), driver's helpers (*sitokar*), ticket salesmen (*tukang dijual kartjis*), etc.

\*\* Number of individuals exceeds number of cases, since some have more than one defendant.

## Diagram III

District Court: Criminal Cases, 1963  
Felonies (*Pidana*)

## A. Types of Crimes

theft, fraud*	107
assault and battery, murder	16
sexual crimes**	6
gambling	4
delinquency	1
slander	1
vagrancy	1
possession of gun	1
hiding a fugitive	1
negligence causing injury or death	6
Total	144***

## B. Ethnic and Rural-Urban Characteristics

	Rural	Urban	Not stated	Total
Minangkabau	97	63	5	165
Non-Minangkabau	1	15	4	20
Javanese	1	4	2	7
Batak	-	3	2	5
Chinese	-	3	-	3
Ambonese	-	2	-	2
Atjehnese	-	1	-	1
Nias	-	1	-	1
Indian	-	1	-	1
Not stated	-	-	1	1
Total	98	78	10	186***

## C. Job, Age and Sex Breakdown

	10-20		21-30		31-40		41-50		51-60		61-70		71-80				Total
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
farmers	17	-	20	-	9	1	5	-	1	-	-	-	2	-	54	1	55
peddlers/small businessmen	8	1	8	-	9	1	8	1	-	1	2	-	-	-	35	4	39
motor transport workers	4	-	7	-	3	-	1	-	-	-	-	-	-	-	15	-	15
civil servants	2	-	7	1	3	-	1	-	-	-	1	-	-	-	14	1	15
craftsmen	3	-	2	-	1	-	-	-	-	-	1	-	-	-	7	-	7
laborers	3	-	2	-	1	-	-	-	-	-	-	-	-	-	6	-	6
students	4	-	1	-	-	-	-	-	-	-	-	-	-	-	5	-	5
housewives & family members	1	-	-	1	-	2	-	1	-	-	-	-	-	-	1	4	5
other/not stated	17	-	15	1	1	2	2	-	1	-	-	-	-	-	36	3	39
Total	59	1	62	3	27	6	17	2	2	1	4	-	2	-	173	13	186***

\* Including theft (*pentjurian*), purchasing stolen goods (*penadahan*), embezzlement/fraud (*penggelapan*), swindle/fraud (*penipuan*).

\*\* Including adultery (*perzinaan*), rape (*perkosaan*), statutory rape (literally, to be adulterous with an underaged child: *berzina dengan anak dibawah umur*), abortion (*pengguguran*), disposal of baby's corpse (*menghilangkan majat bayi*).

\*\*\* Number of individuals exceeds number of cases, since some cases have more than one defendant.

Diagram IV

District Court: Criminal Cases, 1963  
Economic Crimes (*Pidana ekonomi*)

A. Types of Crimes

overstorage of goods	17
overpricing of goods	15
selling cigarettes without tax band	3
interfering with government food program	2
delivering goods without proper documents	1
Total	38**

B. Ethnic and Rural-Urban Characteristics

	Rural	Urban	Total
Minangkabau	4	31	35
Non-Minangkabau			
Batak	-	2	2
Chinese	-	2	2
Javanese	-	1	1
Atjehnese	-	1	1
Unknown	-	2	2
Total	4	39	43**

C. Job and Age Breakdown

	10-20	20-30	30-40	40-50	50-60	Total
peddlers/small businessmen	1	6	4*	5	2	18
motor transportation workers	-	9	3	2	1	15
civil servants	-	2	1	1	-	4
contractors	-	-	-	1	-	1
laborers	-	1	-	-	-	1
students	1	-	-	-	-	1
not stated	1	2	-	-	-	3
Total	3	20	8	9	3	43**

\* Of the 43 defendants, 42 are males; there is one female in the 30-40 age group of peddlers/small businessmen.

\*\* Number of individuals exceeds number of cases, since some have more than one defendant.

but there was no indication during the research period (1963-66) that legislation on such matters might be forthcoming.

### District Court: Civil Cases

Civil cases concern either property disputes or petitions for marriage certificates, adoption and other legal papers. A number of matters settled outside the courts such as disputes between villages or within kin groups over titles seem never to appear in court. Disputes over behavior, if they are brought to court, come in the guise of criminal, not civil, cases.

Of 128 civil cases heard in 1963, only 28 were petitions (see Diagram V). Of these 28 petitions, 24 were completed during the calendar year; all 24 petitions were granted. The majority (18) of the petitioners were civil servants or the wives of civil servants. They petitioned for adoption papers and marriage certification and/or certification as legal heirs; these civil servants were Minangkabau, Javanese, Batak (and 3 whose ethnic group was omitted from the court records); in addition an Indian ex-serviceman petitioned for citizenship. Ten of the petitioners were not civil servants; 6 were Chinese and 4 Minangkabau. The Minangkabau petitions were for the same matters listed above, while the Chinese petitioned for marriage certification, civil marriage, birth certification, citizenship, and immigration papers. In general most petitioners were male (19 out of 28) and urban (22 out of 28).

The remaining 100 civil cases heard in the district court in 1963 were property disputes (see Diagram VI): 82 were between Minangkabau, 14 involved non-Minangkabau, and 4 concerned institutions (e.g., the government and banks) *vs* private parties. Of the cases between Minangkabau, 55% involved land claimed to be ancestral property; about two-thirds of these cases also involved transactions. The proportion of these cases which were among kinsmen could not be determined from the information in the court registry book, but about half were members of the same suku (lineal kin) and about half members of different suku (affinal kin and non kin). Another large category of property cases among Minangkabau (23%) were land disputes (most of which were transactions) for which the property class was not stated or, if stated, was not ancestral property. In addition, about 12% were transaction cases not involving land. For both of these latter types of cases, the plaintiffs and defendants were mostly members of different suku (probably usually non-kin). About 65% of the cases among Minangkabau were between villagers, and only 20% between townspeople; the remainder were among both rural and urban residents. Most land cases were between villagers, while cases concerning other sorts of property occurred mostly among townspeople.

Diagram V

District Court: Petitions, 1963

A. Petitions

Types of petitions	Total
adoption	14
marriage certification	2
marriage certification and legal heir	4
legal heir	3
civil marriage	1
birth certification	1
citizenship	2
immigration documents	1
Total	28

B. Occupations, Sex and Rural-Urban Characteristics of Petitioners

Ethnic group and types of petitions	Rural				Urban				Total
	Civil servant or spouse of civil servant		Other		Civil servant or spouse of civil servant		Other		
	M	F	M	F	M	F	M	F	
Minangkabau									
adoption	1	1			2	2	1		7
marriage certification and legal heir		2						1	3
legal heir (or parents, of Mo, of Ch)	1		1				1		3
Chinese									
marriage certification								2	2
civil marriage							1		1
birth certification							1		1
citizenship							1		1
immigration documents							1		1
Javanese									
adoption					4				4
Indian									
citizenship					1 (injured veteran)				1
Batak									
marriage certification and legal heir						1			1
Unknown									
adoption					3				3
Total	5		1		13		9		28



Diagram VI

District Court: Civil Cases, 1963

Types of cases	Suku			Not clear	Rural	Urban	Both	Total
	Same	Diff.	Both					
<u>Minangkabau</u>								
Ancestral property involved	22	22	3	1	34	7	7	48
land, land & other	21	21	3		33	5	7	45
division	(2)							2
transactions	(12)	(14)	(3)					29
mixed or unclear	(7)	(7)						14
other--money, gold, gift	1	1		1	1	2		3
Other types of property or not stated	7	21	3	3	18	9	7	34
land, land & other	5	11	1	2	14	2	3	19
transactions	(5)	(7)	(1)	(2)				15
mixed or unclear		(4)						4
other	2	10	2	1	4	7	4	15
transactions	(2)	(7)		(1)				10
exchange			(1)					1
division		(2)						2
mixed or unclear		(1)	(1)					2
Total								82
<u>Non-Minangkabau Involved</u>								
Ancestral property involved								
Other types of property or not stated								
land, land & other						14		14
transactions								3
mixed or unclear								2
other								1
transactions								11
mixed or unclear								6
								5
<u>Institution vs Private Citizen</u>								
						4		4
land, transaction (govt.)								1
bank loans								3
Total								18

Civil property cases contrast greatly with petitions. Most disputants are rural Minangkabau while most petitioners are urban non-Minangkabau. Twenty per cent of the property cases were contested during 1963 (doubtless more in later years) and only 37% of the property cases were completed in that year; no petitions were contested (all were granted, and there is no defendant to disagree with the decision) and 85% of the petitions were completed during the calendar year. There was an average of but one hearing per petition but an average of almost nine hearings spread over three years, 1963-65, per civil property case; and by the end of 1965 over 25% of the 1963 property cases were not yet settled.

Civil property cases are extraordinarily complex; they have generally been heard by a variety of settlement institutions outside the courts without success. Thus it is only the most insoluble of property disputes which reach the district court--providing fascinating material for judges' legal reasoning and, indeed, for the whole courthouse staff, who spend long hours discussing the cases. Theoretically, the legal principles used in civil property cases are those of customary law--but it is a customary law more conservative and more rationalized than current custom itself. And there are problems which the district court hears--such as disputes between partners in a trucking business, for example--for which customary law has no answers.

Notwithstanding the involution and complexity of the cases themselves, they concern only a very limited range of trouble topics. This is evident in Diagram VII which summarizes a sample of 115 civil cases<sup>8</sup> for which detailed records were collected. There are but four main issue-dyad clusters: (1) lineal kin-ancestral property rights, including disputed transactions, 30 cases, 26%; (2) marriage linked kin-nuclear family property rights, often in opposition to ancestral property rights, 17 cases, 15%; (3) lineal kin-transactions, in which ancestral property rights are *not* at issue, 18 cases, 16%; (4) non kin-transactions, 35 cases, 28%. Eighty-five per cent of the cases fall into one of these four types. It is difficult to compare the categories used to describe this intensively studied sample of cases with those used in Diagram VI for civil cases heard in 1963 since very little data--only that found in the court register--was available for the latter.

Seventy-two (or 68%) of the 106 cases among Minangkabau concerned land. There were so few cases involving non-Minangkabau in the sample that no trends can be determined. All cases

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8. The cases were heard in one district court between 1944 and 1963. The sample was based on simple availability of case records. Thus cases which were not yet typed (that is, still in the hands of the court recorders) or had been lost or borrowed were not included in this sample.

Diagram VII

District Court: Civil Case Sample, 1944-1963  
Issues and Dyads

Issues	Anc. or Lin. Prop. Rights (harato pusako, harato kaum)						Nuc.Fam. or Anc. Prop. Rights?		Nuc. Fam. Prop.Rights		Trans- actions		Total
	Division,etc		Transactions		Mixed unclear		Division		Division				
	land	other	land	other	land	other	land	other	land	other	land	other	
Dyads													
Minangkabau													106
same lineage	6											1	7
same lineage & others	2		4	1								3	10
same suku	7		4	2							12	1	26
same suku & others	2		1		1						1		5
marriage linked							8	2	2	3		1	16
marriage linked & same lineage	1						1						2
marriage linked & same suku												1	1
marriage linked & others					1			1					2
others					2						17	18	37
Non-Minangkabau Involved									1		1	1	3
Institution Involved												6	6
Total	18		9	3	4		9	3	3	3	31	32	115

in which an institution was involved were cases of banks against debtors. In the cases between Minangkabau, 70% of the disputants were villagers, 24% townspeople, and 6% both.

The cases may be presented in court by kin of the disputants who are advised by *pokrol* (lay specialists in civil court cases) or informally by judges, court recorders, and their assistants; alternatively, the disputants may be advised and represented in court by academically trained lawyers. The involvement of the court house staff in advising disputants and preparing legal documents (such as the complaint, *gugatan*) for use in court is but another instance of the multiplicity of role relationships linking Minangkabau to each other. Such a situation is of course open to charges of influence and preference--charges the Minangkabau themselves often make in private when discussing a case they have lost. Nonetheless such role interpenetration also means that judges and court house employees are not insulated from the community; they may come to understand a variety of background factors not included in the information presented as evidence in court. Justice in Minangkabau courts is *not* blind.

The district court judges reason out how to settle the civil cases brought to them on the basis of previous decisions on similar cases, although there is as yet no formal system of legal precedence, or according to their own reasoning from the diffuse unwritten customary law and--especially for cases for which there is neither customary law nor precedent--on the basis of other (legal) ideas that make sense and seem fair to them. They write up as sound and well-reasoned justifications for their decisions as they can and then wait, with little disguised eagerness, to see what the High Court will make of those decisions which are contested.

### Regional and National Legal Thinking

Not all legal thinking occurs within the context of particular disputes. There is also an ongoing dialogue--in discussions, conferences, and through publications--between proponents of different legal principles and interpretations. For example, there has been and is a continuing movement for family law unification among a segment of the national elite; many Djakartan and a few provincial lawyers see in the possibility of developing a unified national family law a means for minimizing ethnic distinctions, easing problems of ethnic intermarriage, promoting national unity, and becoming more "modern." On the other hand, there has been a tendency for members of groups, such as the Minangkabau, whose family law differs greatly from that proposed to feel that such suggestions, if they become a basis for legislation, would represent a form of cultural imperialism. The proposed family law is appropriate to bilateral

kinship systems--such as that of the Javanese, the largest Indonesian ethnic group--but not to unilineal kinship systems, of which there are many among the ethnic groups of the outer islands of Indonesia.

In addition to the largely informal dialogue between national and regional legal thinkers, there have been regional legal conferences which have discussed problems of intra-region (or intra-ethnic group) legal pluralism as well as questions of national legal unification. Among the Minangkabau, two recent legal conferences are of especial importance: (1) the *Badan Permusjawaratan Alim Ulama, Ninik Mamak dan Tjerdik Pandai Minangkabau* (The Deliberative Body of Minangkabau Islamic Leaders, Kin Group Elders, and Intelligentsia), held May 4 and 5, 1952 in Bukittinggi, West Sumatra, and (2) the *Seminar Hukum Adat Minangkabau* (Minangkabau Adat Law Seminar), July 21 through 25, 1968. Adat scholars, Islamic leaders, and intelligentsia attended both conferences; in the second conference the participating intelligentsia were mostly members of the legal profession and government officials.

The first conference was primarily concerned with the problem of inheritance of earned property. As urbanization had increased and earnings (pantjarian) had become more and more important, while land (most ancestral property, harato pusako, is land owned by a matrilineal kin group) had decreased in economic significance, the question of the inheritance of harato pantjarian (earned property) had become a central issue in Minangkabau. In particular, the issue discussed at the 1952 conference was whether a man's earned property should be inherited by his sisters' children (proponents of this view claimed that this would be the proper interpretation of the matrilineal Minangkabau adat) or by his children (according to *faraid*, Islamic inheritance law). The decision of the first conference--that Islamic law should be used with regard to a person's earned property and adat law with regard to ancestral property--was used as a precedent by the later conference.

The 1968 conference went on to specify that "earned property" referred to one-half of the property gained by a person during his or her marriage [presumably the other half going to the wife/husband] plus whatever a person brought into the marriage with him/her; it further specified that 1/3 of an individual's earned property could be assigned freely by a will and that 2/3 should be divided according to Islamic inheritance law. This is a legal compromise and, as such, might become a legal guideline for dispute settlement. It is not, and was not intended to be, a descriptive statement concerning the diversity of contemporary Minangkabau inheritance practice.

The overall tone of the second conference was one of opting for ethnic legal diversity and the maintenance of ethnic identity rather than for national legal unification. One participant,

for example, stated, "And I am utterly sure that there is no Minangkabau who wishes Minangkabau to be washed away, and I also believe that the Government is not willing for the Minangkabau [example of Indonesian] diversity to be lost--that is, the Government which is based on the symbol of 'Unity in Diversity.'" This principle of ethnic legal identity (an identity which in itself is based on legal pluralism) was expressed in the conference's disapproval of various aspects of the national land reform law of 1960 and support of Minangkabau customary land tenure procedures, their approval of the governor's strengthening of village level dispute settlement councils, and their resolution requesting the establishment of an Islamic Law Chamber in the Supreme Court. The conference's opposition to the Land Reform Court can be thought of as both a reflection of regional discontent with the Land Reform Act and also as supportive of the legal profession per se. (The Land Reform Court "judges" as originally envisioned during the Sukarno regime would have included representatives of political parties, thus weakening the position of the judiciary as a profession.)

The preface of the Adat Law Seminar report makes explicit a feature often emphasized by the Minangkabau--that their conception of ethnic identity is one to which both adat and Islam are central; both the 1952 and the 1968 conferences' decisions illustrate how the Minangkabau are attempting to rationalize and to integrate these two basic features of their cultural and legal heritage.

### Summary and Conclusions

In summary, the Minangkabau utilize their plural legal traditions in the courts in such a way as to compartmentalize the various legal traditions--Islamic law being used at the Islamic court, western criminal law for criminal cases at the state court and unwritten customary law being utilized for most state court civil cases. Further, aspects of law which are socially irrelevant are not used and those which are potentially conflicting tend to be edited out. This last occurs not so much by negating the legal principles but by a system of jurisdiction such that the Islamic court, for example, handles certain kinds of problems, while other kinds of problems are heard in the state court. Yet this compartmentalization is not water tight. There is considerable cross fertilization of legal ideas, particularly with regard to disputes settled out of court, and in discussions, publications, and conferences about legal issues. Shifts in legal thought, that is, in ideas about how to settle certain kinds of conflict, spread from the populace to the courts and vice versa. Sometimes different legal traditions converge: there seems little doubt, for example, that the improving legal position of the widow with regard to inheritance, as contrasted to the husband's matrilineal kin group, is a matter which for

the general Minangkabau populace has been mediated by new interpretations of both Islam (partly as a corollary of Islamic teaching concerning a man's duties to his wife and children) and adat (by interpreting an adat saying referring to joint farming so as to support a conception of marital community property per se). These changing attitudes and interpretations have influenced district court judges, who have found that High Court and Supreme Court judges are also sympathetic to giving the widow a stronger legal position--but these latter judges appear to have been influenced more by Western values and legal ideas concerning widows' rights than by either Islam or adat.<sup>9</sup>

In such a plural legal system the existence of varying traditions provides ready ideological leverage for those who advocate legal "reform." Moreover, the potential for gradual adjustments, for a pragmatic ad hoc sort of change in legal principles, may be presumed to be greater than for more unitary tightly integrated systems. Yet, in the midst of continual legal and other change, Minangkabau culture has shown enormous resiliency; the basic cultural and structural principles of Minangkabau society--matriliny and *marantau* (going out, migration)--have repeatedly been reinterpreted so as to support shifts in structural form and cultural content; Islam and modern education, urbanization and the modern nation-state all involve ideas and structures that have each in its own way been assimilated to the basic themes. Each shift has set the scene for new types of legal interpretation and argument. The push for consistency exists, as the conferences indicate, but the current Minangkabau use of their rich and contradictory legal principles is thoroughly utilitarian. The nature of the legal principles themselves may limit the decision or settlement which can be reached, but the Minangkabau have no qualms about trying a different legal principle (or a non-legal power maneuver for that matter) if the first principle does not lead to the desired results.

The study of Minangkabau legal thinking in the context of particular disputes and as it is occurring at the national and regional levels in response to an awareness of recurrent conflict themes is revealing of the sorts of general processes by which legal ideas develop and change, for law develops out of, and has its primary relevance to, conflict situations. I have made no attempt to follow through any particular line of Minangkabau legal thinking; rather, I have attempted to illustrate the various ways in which legal ideas are utilized in Minangkabau society. I have been particularly interested in the extent to which Minangkabau legal arguments may reflect differing conceptions of justice and also how plural legal principles are utilized in the strategy of disputing.

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9. See Daniel Lev, "The Supreme Court and Adat Inheritance Law in Indonesia," American Journal of Comparative Law (Spring, 1962).